



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

ANTONYO A. MARTIN, SR.,

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS; CORRECTIONAL
OFFICER JOHN DOE; CORRECTIONAL
OFFICER RICHARD ROE; and INMATE
JOHN DOE,

Defendants.

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Civil Action No. 0:19-cv-059-MGL

ORDER ADOPTING THE REPORT AND RECOMMENDATION,
GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS
DECLINING TO EXERCISE JURISDICTION OVER THE REMAINING STATE LAW
CLAIM, REMANDING THIS CASE TO STATE COURT, AND DEEMING AS MOOT THE
PARTIES' CONSENT MOTION TO STAY THE DEADLINES

This action arises under 42 U.S.C. § 1983. Plaintiff Antonyo A. Martin, Sr. (Martin) is represented by counsel. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting Defendants South Carolina Department of Corrections (SCDOC), Correctional Officer John Doe (Correctional Officer Doe), and Correctional Officer Richard Roe's (Correctional Officer Roe) motion to dismiss be granted in part and denied in part. She recommends the motion be granted as to Correctional Officer Doe and Correctional Officer Roe but denied as to the SCDOC.

Although Inmate John Doe (Inmate Doe) is not a movant in the motion to dismiss, the Magistrate Judge urges the Court dismiss him as a party to the lawsuit in accordance with Fed. R. Civ. P. 4(m). According to the Magistrate Judge, the dismissals of Correctional Officer Doe, Correctional Officer Roe, and Inmate Doe should be without prejudice.

The Magistrate Judge further proposes the Court decline to exercise jurisdiction over the remaining state law claim against the SCDOC and remand the case to state court. She also advises the Court deem as moot the parties' consent motion to stay the deadlines. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on April 23, 2019, ECF No. 14, but Martin failed to file any objection to the Report. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment

of the Court the motion to dismiss is **GRANTED IN PART AND DENIED IN PART**. Specifically, the motion is **GRANTED** as to Correctional Officer Doe and Correctional Officer Roe, but denied as to the SCDOC.

Inmate Doe is **DISMISSED** from this lawsuit pursuant to Fed. R. Civ. P. 4(m). The dismissals of Correctional Officer Doe, Correctional Officer Roe, and Inmate Doe are **WITHOUT PREJUDICE**.

The Court declines to exercise jurisdiction over the remaining state law claim against the SCDOC and thus **REMANDS** this action to state court. Accordingly, the parties' consent motion to stay the deadlines is **DEEMED AS MOOT. IT IS SO ORDERED.**

Signed this 14th day of May 2019 in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE